IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

LEROY RILEY
Plaintiff,

v.

CHARLES SIMPSON, KERRI CROSS, DAVID MCCOY, CHARLES M. SHANE MR. GASTON, sued in there individual capacities, DAVID J. GOOD, sued in his individual and official capacities
Defendants.

Civil Action No. 05-172E

FILED
'06 AUG 28 A10:19
CLERK
U.S. DISTRICT COURT

MOTION FOR RECONSIDERATION OF ORDER
TO DISMISS COMPLAINT

TO THE HONORABLE JUDGE, MAGISTRATE OF THE ABOVE SAID COURT:

Petitioner Leroy Riley moves this honorable Court to reconsider the Court Order dated August 16,2006 dismissing the plaintiff complaint pursuant to Rule of civil Procedure, Rule 60 (b), Relief from judgement or Order; Mistakes; Inavertance; Excusable Neglect.

1. On 8/7/06 the plaintiff filed with this Court a timely objection to this Magistrate recomendation to dismiss the plaintiff complaint. This document was filed (2) days befor the dead line of after 8/10/06; included with this documents where proff of service served on the defendants attorney. "These documents were filed timely".

2.)n August 18,2006 the plaintiff received Notice from the Clerks Office informing the plaintiff that he had sent the documents "Appeal" to the wrong location,"The Judge Office" and that the plaishould have sent the documents directly to the clerk office to avoid failure in meeting the dead line, see Ehibit (a) attached.

Service by Mail under Rule 5(b)(2)(b),(c)or(d) adds 3 days after a period would otherwise expire under Civ.R. 6(e). also see, **Harsco Corp vs. Zlotnicki 779 F.2d 906 3rd cir. 1985**; Where the purpose for this Motion is to correct manifest error.

WHEREFORE, petitioner prays that this Motion be granted on it's facts, and that the complaint go forward on it's merits.

Date: 8/24/06

Pro se plaintiff

VERIFICATION

I verify that the foregoing is true and correct, to the best of my knowledge, information and belief. I understand that false statements herein, are made subject to the penalties of **18 Pa. C.S.A. §4904** (relating to unsworn falsification to authorities) (Also pursuant to 28 U.S.C - 1746)

Respectfully submitted,

Date: 8/29/04

(Print name) Leroy Riley

(Inmate No.) FQ8672

State Correctional Institution at Forest
P.O. Box 945
Marienville, PA 16239

PROOF OF SERVICE

I hereby certify that I am this day serving the foregoing document upon the persons and in the manner indicated below, which satisfies the requirements of Pa. R.A.P. 121:

Office of Attorney General
6th Floor, Manor Complex
564 Forbes AV
Pittsburgh, PA 15219

____ U.S. First Class Mail
____ Certified Mail
____ Hand Delivery
____ Other ________________

____ U.S. First Class Mail
____ Certified Mail
____ Hand Delivery
____ Other ________________

____ U.S. First Class Mail
____ Certified Mail
____ Hand Delivery
____ Other ________________

Respectfully submitted,

Date: 8/24/04

(Print name) [signature]
(Inmate No.) Leroy Riley FQ8672

State Correctional Institution at Forest
P.O. Box 945
Marienville, PA 16239

EXHIBIT (A) p 1

MEMORANDUM

CLERK'S OFFICE
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA

DATE: EFFECTIVE JULY 1, 2005

REPLY TO ATTN OF: CLERK'S OFFICE

SUBJECT: FORMAT OF PAPERS FILED WITH THE CLERK

TO: **ALL PRO SE LITIGANTS**

*ACCORDING TO LOCAL RULE 5.1, DOCUMENTS FILED WITH THE CLERK MUST FIT THE FOLLOWING GUIDELINES

-ALL DOCUMENTS MUST BE ON 8 ½ X 11 INCH SIZE PAPER

-THE LETTERING OR TYPEFACE SHALL BE CLEARLY LEGIBLE & SHALL NOT BE SMALLER THAN 12 POINT WORD PROCESSING FONT OR IF TYPEWRITTEN SHALL NOT BE SMALLER THAN PICA

-THE TEXT MUST BE DOUBLE SPACED, BUT QUOTATIONS MORE THAN TWO LINES MAY BE INDENTED AND SINGLE-SPACED

-HEADINGS & FOOTNOTES MAY BE SINGLE SPACED

-MARGINS MUST BE AT LEAST ONE INCH ON ALL FOUR SIDES

-PAGE NUMBERS MAY BE PLACED IN THE MARGINS, BUT NO TEXT MAY APPEAR THERE

-THE LETTERING OR TYPEFACE MAY ONLY APPEAR ON ONE SIDE OF THE PAGE

-ALL PAPERS SHALL BE SECURELY FASTENED WITH A PAPER CLIP, BINDER CLIP, OR RUBBER BAND. THE USE OF TAPE, PLASTIC STRIPS, STAPLES OR OTHER SUCH FASTENERS IS PROHIBITED, WITH THE EXCEPTION THAT ADMINISTRATIVE & JUDICIAL RECORDS MAY BE FIRMLY BOUND

-EACH BRIEF & MOTION SHALL BE A SEPARATE DOCUMENT

-IT IS NO LONGER NECESSARY TO FILE ALL DOCUMENTS IN DUPLICATE.

CLERK'S OFFICE
P.O. BOX 1820
ERIE, PA. 16507

-DO NOT SEND MOTIONS OR OTHER DOCUMENTS THAT YOU WANT DOCKETED AT YOUR CASE NUMBER TO THE JUDGE. SEND THESE DIRECTLY TO THE CLERK'S OFFICE TO AVOID FAILURE IN MEETING DEADLINES

-THE CLERK'S OFFICE IS NOT STAFFED BY ATTORNEYS AND THEREFORE CANNOT OFFER ANY TYPE OF LEGAL ADVICE

-PLEASE BE AWARE THAT *IN FORMA PAUPERIS* STATUS ONLY WAIVES THE FILING FEE & DOES NOT COVER OTHER COSTS

-THERE IS A TEN DOLLAR ($10.00) CHARGE FOR A COPY OF THE LOCAL RULES, OR THEY CAN BE FOUND AT WWW.PAWD.USCOURTS.GOV

PAGE INMATE ACCOUNTS SYSTEM 08-11-2006
MONTHLY ACCOUNT STATEMENT

INMATE NUMBER	NAME LAST	FIRST	MI	OLD BALANCE
FQ8672	RILEY	LEROY		6.33

BATCH #	DATE MO DY YEAR		TRANSACTION DESCRIPTION		TRANSACTION AMOUNT	BALANCE AFTER TRANSACTION
3312	07-25-2006	13	PERSONAL GIFT FROM MIKE, VERONICA	J233082	30.00	23.67
3312	07-25-2006	50	ACT 84 TRANSACTION * 56/03	07/25/06	-6.00	17.67
3312	07-25-2006	13	PERSONAL GIFT FROM BENSON, CHERISH POLK	J233349	50.00	67.67
3312	07-25-2006	50	ACT 84 TRANSACTION * 56/03	07/25/06	-10.00	57.67
8214	08-02-2006	32	FRS COMMISSARY FOR 8/02/2006		-36.58	21.09
3373	08-03-2006	38	INSIDE PURCHASES ID		-5.00	16.09
9215	08-03-2006	10	INMATE EMPLOYMENT FRS PAYROLL 2006 - 07 GRP 1		28.00	44.09
9215	08-03-2006	50	ACT 84 TRANSACTION * 56/03	08/03/06	-5.60	38.49
3391	08-07-2006	37	POSTAGE		-.48	38.01
8221	08-09-2006	32	FRS COMMISSARY FOR 8/09/2006		-14.83	23.18
3452	08-11-2006	37	POSTAGE		-.87	22.31

NEW BALANCE AS OF THIS STATEMENT ------------------> 22.31

Exhibit A-2